records of arbitral hearings. That is untrue. Parties and arbitrators are free to select their level of informality and record-keeping. Arbitrators need not accord their practices to the possibility of court review. *See Dawahare v. Spencer*, 210 F.3d 666, 669 (6th Cir. 2000).[8]

Finally, Respondent avers that any finding of state action would invite additional constitutional challenges. That is wrong for two reasons. First, "judicial confirmation of punitive damages in an arbitral award would constitute state action even if confirmation of an arbitral award in general did not," because "punitive damages [] derive from a public right." Pet. 22. Punitive damages "aim to safeguard the *public interest* as defined by the State," *id.*, and using a State's coercive power to effectuate its own interests is the very quintessence of state action. Second, parties choose to waive certain procedural due process rights when agreeing to arbitrate, but not substantive due process rights.[9] Just as a person entering a guilty plea waives the procedures of trial, *Boykin v. Alabama*, 395 U.S. 238, 243 (1969), but not the substantive due process right to humane conditions of detention, *see Estelle v.*

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[8] Due process review creates no more pressure to keep records than the pressure already exerted by manifest disregard review, the ineffectual doctrine into which Respondent would shoehorn *Gore*. *See Dorfman v. First Choice Constr. Corp.*, 755 A.2d 924, 924 n.1 (Conn. App. 2000) ("Some record of the actions of the arbitrator would be required for us to consider the plaintiff's claim that the arbitrator acted in manifest disregard of the law."), *cert. denied*, 762 A.2d 908 (Conn. 2000).

[9] Due process limits on punitive damages are substantive, not procedural. *See Honda Motor Co., Ltd. v. Oberg*, 512 U.S. 415, 420 (1994) (describing Constitution's "substantive limit on the size of punitive damages awards"); *see also Gore*, 517 U.S. at 599-600 (Scalia, J., dissenting) (describing *Gore* as identifying "substantive due process right" against excessive punitive damages awards; describing *TXO* plurality as having imposed "substantive" limits); *id.* at 613 (Ginsburg, J., dissenting) (criticizing majority's "vague concept of substantive due process").

Gamble, 429 U.S. 97, 102 (1976), so too a party to an arbitration waives procedural due process rights that ordinarily attend a trial but not the substantive due process right to be free of a judgment coercing payment of outlandish punitive damages in vindication of a public interest.[10]

The Court should grant the Petition for a Writ of Certiorari.

Respectfully submitted,

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[10] Respondent does not even argue that parties could avoid runaway arbitral awards of punitive damages through careful contract drafting. Parties may be limited in that ability, Pet. 16-17, and may want punitive damages available, as Respondent did here. Moreover, our law has never required persons to protect themselves through contract from every imaginable constitutional infringement.